



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/142112

PRELIMINARY RECITALS

Pursuant to a petition filed July 03, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on September 20, 2012, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Human Services (the agency) correctly determined the effective date of Petitioner's medical assistance.

NOTE: This case was initially assigned case number MGE/142112; which would denote a general medical assistance case. The case number was changed and corrected to FC P/142112 to reflect Petitioner's enrollment in the Family Care program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney L William Kahler
221 N Park St PO Box 89
Reedsburg, WI 53959-0089

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Aina Bromberek

Waukesha County Health and Human Services
500 Riverview Avenue

Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

NOTE: The record was held open to give the agency an opportunity to submit a copy of the policy upon which it relied and documentation verifying Petitioner's income. The documents have collectively been marked as Exhibit 17.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The Petitioner applied for the Family Care Program through the ADRC, the Aging and Disability Resource Center. (Exhibit 1, pg.4; Exhibit 11) The ADRC sent Petitioner's application to the agency on June 1, 2012, referring Petitioner to a managed care organization (MCO) named Care Wisconsin. The ADRC indicated that the Petitioner's tentative enrollment date was June 1, 2012. The agency determined Petitioner's final enrollment date to be July 1, 2012. (Exhibit 11)
3. On June 22, 2012, the agency sent Petitioner a notice indicating that as of July 1, 2011, he was enrolled in the Family Care Medicaid program with a cost share of \$2357.03. (Exhibit 6)
4. Petitioner filed a request for fair hearing on July 3, 2012, asserting that the effective date of Petitioner's Family Care coverage should have been May 1, 2012. (Exhibit 1)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11, *Medicaid Eligibility Handbook (MEH)*, §29.1.

"Three groups work together to administer the Family Care program:

1. An Aging and Disability Resource Center (ADRC) serves as a "one-stop" shopping point to provide information and assistance in accessing available support services, housing, costs, and community services. ADRC staff also assess potential clients' functional level of care, which is an eligibility criterion.
2. Income Maintenance Agencies determine and certify Medicaid and Family Care non-financial and financial eligibility, and process Family Care enrollment.
3. Managed Care Organizations (MCOs) complete a comprehensive assessment and develop a plan of care, as well as provide and/or coordinate long term care services for Family Care enrollees. Participants in the Family Care program choose to be enrolled in a MCO. "

MEH §29.2

The enrollment date for Family Care is the same date that the member has met all program eligibility requirements AND is enrolled in the managed care organization. *MEH §§ 2.8.1 and 29.5.1* The date of enrollment is to be provided to the agency by the ADRC. *Id.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. Thus, as an initial applicant, Petitioner bears the burden to prove that he met all of the eligibility criteria and was enrolled in the MCO on May 1, 2012, such that his Family Care benefits should have begun on May 1, 2012.

Petitioner asserts that enrollment should begin May 1, 2012, because May was the month of application. Petitioner's assertion is incorrect. Per MEH §§ 2.8.1 and 29.5.1, only regular Medicaid benefits begin on the first of the month of application. This rule does not apply to Family Care applicants. As stated above, for Family Care applicants, enrollment begins on the same date all program requirements are met and the applicant is enrolled in an MCO.

Petitioner has not produced any evidence to refute the agency's determination that Petitioner's enrollment date was July 1, 2012. Further, Petitioner could not have been enrolled in an MCO on May 1, 2012, the desired

effective date of coverage, because according to Petitioner's request for fair hearing, he did not apply for Family Care until May 21, 2012. Consequently, it is found that Petitioner has not met his burden to prove that his Family Care Enrollment was effective May 1, 2012.

CONCLUSIONS OF LAW

The agency correctly determined Petitioner's enrollment date to be July 1, 2012.

THEREFORE, it is

ORDERED

That the appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

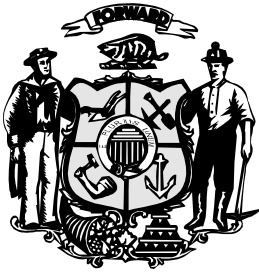
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of October, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Waukesha County Health and Human Services – email
Department of Health Services - email
L William Kahler, Kahler Law Offices - e-mail



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 2, 2012.

Waukesha County Health and Human Services
Office of Family Care Expansion
kahler@mwt.net